

Chase Cawthorne

From: Tanford, J. Alexander <tanford@indiana.edu>
Sent: Monday, March 7, 2016 10:20 AM
To: Rep. Ray Franz; Rep. Ken Yonker; Rep. Brett Roberts (District 65); Rep. Scott Dianda (District 110)
Cc: Chase Cawthorne
Subject: HB 4125 - Direct Shipment of Wine By Retailers

To: Committee on Regulatory Reform
Re: HB 4125 - Direct shipment of wine by retailers
Hearing Date: March 9
From: Robert Epstein & James Tanford, Epstein Cohen Seif & Porter LLP

We are the attorneys who have successfully sued Michigan twice over its discriminatory wine shipping laws that gave favorable treatment to in-state businesses. In both *Granholt v. Heald* (wineries) and *Siesta Market v. Granholt* (retailers), the federal courts declared that it was unconstitutional for the State to allow in-state businesses to ship wine to consumers, but prohibit out-of-state businesses from doing so.

We were therefore pleased to see HB 4125 introduced that would allow both local and out-of-state wine retailers to ship wine to consumers. This is the growing trend in the age of the Internet, and around 20 states have taken steps to open their markets to regulated shipping (and collecting the taxes that accompany it).

However, we were disturbed to hear that an amendment will be offered to limit retailer shipping to in-state businesses only and prohibit out-of-state retailers from doing so. Federal courts have struck such laws down twice before -- will we really have to sue the State a third time?

The intersection between a state's 21st Amendment authority to regulate alcohol sales and the Commerce Clause's requirement that such regulations may not discriminate against out-of-state businesses is a complicated area of law. We have heard that there is misinformation floating around claiming that various loopholes, technicalities, or decisions in other states will somehow permit Michigan to once again enact a law allowing only in-state businesses to sell and ship wine directly to consumers. We suggest that you base your decision not on vague arguments circulated by lobbyists, but on the actual language in the court's decision in *Siesta Market*. This is the same court that would hear a case challenging a new law that prohibits out-of-state retailers from shipping wine to consumers. The court was absolutely clear:

IT IS FURTHER DECLARED that the statutes and regulations prohibiting out-of-state retailers from selling, delivering and shipping wine through interstate commerce directly to Michigan consumers is unconstitutional under the Commerce Clause.

IT IS FURTHER ORDERED that the State of Michigan and its officials are enjoined from prohibiting out-of-state wine retailers from selling, delivering and shipping wine through interstate commerce direct to consumers.

We urge you to resist the temptation to pass yet another wine shipping law that discriminates against out-of-state businesses. It cannot survive a court challenge.

Robert D. Epstein

• James A Tanford
Epstein, Cohen, Seif & Porter, LLP
50 S. Meridian St., Suite 505
Indianapolis IN 46204
(317) 639-1326
rdepstein@aol.com
tanfordlegal@gmail.com